

BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO

SUZANNE L. WEENIG,)	
)	
Claimant,)	IC 2004-000696
v.)	
)	
INTERMOUNTAIN GAS COMPANY,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Employer,)	AND RECOMMENDATION
and)	
)	
ADVANTAGE WORKERS)	FILED OCT 3 2008
COMPENSATION INSURANCE COMPANY,)	
)	
Surety,)	
Defendants.)	
)	

INTRODUCTION

The Idaho Industrial Commission assigned this matter to Referee Douglas A. Donohue. He conducted a hearing in Pocatello on April 30, 2008. Daniel J. Luker represented Claimant. R. Daniel Bowen represented Defendants. The parties presented oral and documentary evidence and submitted briefs. The case came under advisement on August 25, 2008. It is now ready for decision.

ISSUES

According to the Notice of Hearing, the issues to be decided are as follows:

1. Whether the condition for which Claimant seeks benefits was caused by the alleged industrial accident; and
2. Whether and to what extent Claimant is entitled to the following benefits:

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- a) temporary disability (TTDs);
- b) permanent partial impairment (PPI); and
- c) permanent disability in excess of PPI.

An issue about whether the accident occurred within the course and scope of employment was withdrawn by the parties. Further, the parties agreed to add an issue about the reasonableness of the amount of the bills for medical care as a subset of the causation issue above.

CONTENTIONS OF THE PARTIES

Claimant contends she injured her neck and low back when she fell on a slippery slope. Her complaints arising after her treating physician declared her medically stable are related to the accident.

Defendants contend Claimant has received all medical benefits due her.

EVIDENCE CONSIDERED

The record in the instant case consists of the following:

- 1. Hearing testimony of Claimant, her husband Carl, and adjustor Carole Carr;
- 2. Joint Exhibits A – V, except for page 46 of exhibit B;
- 3. Posthearing depositions of Grant Walker, M.D., James R. Collet, M.D., and Richard T. Knoebel, M.D.

All objections raised in posthearing depositions are overruled.

After considering the record and briefs of the parties, the Referee submits the following findings of fact, conclusions of law, and recommendation for review by the Commission.

FINDINGS OF FACT

1. Claimant worked for Employer as a leak survey technician. She checked gas lines for leaks. Her performance record shows she was generally a good and valued employee. On January 8, 2004, she fell and landed on her tailbone.

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2. On January 9, 2004, Claimant sought urgent care treatment at Portneuf Medical Center. A nurse recorded Claimant's complaints: "Her entire spine is hurting [and] she has shooting pains up [her] neck." On January 16, her complaints were "between her shoulder blades" and her lower back. James R Collet, M.D., treated her. He diagnosed a lumbar strain. He allowed Claimant to return to work with modified duty restrictions. She underwent physical therapy. On February 6, he released her to full duty. On March 5, Dr. Collet opined Claimant had reached maximum medical improvement. Surety accepted the claim and paid benefits through this date.

3. Dr. Collet did not again see Claimant until June 11, 2004 when she returned complaining of a new accident and left arm pain. He noted her back pain had resolved. While treating for her left elbow, she reported yet another injury at her July 23, 2004 visit. This time, a knee injury. Dr. Collet treated both her elbow and knee at additional visits. His colleague, Dr. Himmler, also treated her for these conditions in mid- and late-2004. Their records do not indicate Claimant had or complained of neck or back pain.

4. On January 27, 2005, she returned to Dr. Collet with complaints of chronic neck and back pain which she claimed had been essentially constant since the accident one year ago. X-rays showed degenerative disease. After another hiatus, she sought additional medical care from Benjamin Blair, M.D., on May 26, 2005. MRI scans of her low back and neck were performed on May 31. Her low back was normal. Her neck showed a mild diffused disk bulge at C5-6 which was not deemed clinically significant at that time.

5. This visit to Dr. Blair kick-started a period of substantial medical treatment from additional doctors until Grant Walker, M.D., performed neck fusion surgery on December 7, 2005, and lumbar fusion surgery on July 11, 2006.

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6. Surety denied benefits for medical care which was provided on or after January 27, 2005 as unrelated to the January 8, 2004 accident.

7. In early 2005, Dr. Collet opined Claimant's 2005 neck and back complaints were not related to the January 8, 2004 accident. On the date of his posthearing deposition, he still held that opinion.

8. Based largely upon Claimant's reported history of symptoms, Dr. Blair opined Claimant's condition, from his first visit in May 2005 forward, was completely related to the January 8, 2004 accident. He acknowledged her condition was tied to a preexisting degenerative condition. He tied it to the accident because she reported she had been asymptomatic before and constantly symptomatic after the accident.

9. Richard T. Knoebel evaluated Claimant on April 10, 2008 at Defendants' request. Dr. Knoebel opined that the medical records showed Claimant had been stable after the accident as early as February 6, 2004; that all medical care after February 6, 2004 was unrelated to the accident; and that her condition and impairment as of the date of the evaluation was entirely unrelated to the accident.

10. Based largely upon Claimant's reported history of symptoms, Dr. Walker opined Claimant's condition and need for surgeries was related to the industrial accident.

Prior medical care

11. Claimant has a long history of chiropractic and other medical care.

12. Claimant reported she chipped her tailbone in 1982, but medical records from that time are not a part of the record.

13. Claimant mentioned prior chiropractic care having occurred before 1995, but the actual records of treatment are not a part of the record.

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14. Claimant underwent significant chiropractic treatment for all parts of her spine beginning August 16, 1995. She attended 23 visits in the latter half of 1995; 18 visits in 1996; 13 visits in 1997; 46 visits in 1998; 40 visits in 1999; 11 visits in 2000; 3 visits in 2001; 4 visits in 2002; and 3 visits as of May 30, 2003.

15. Claimant has made 18 workers' compensation claims in the past 25 years. Nothing about her jobs appears particularly dangerous. While not indicative – certainly not dispositive – of the legitimacy of the unwitnessed January 8, 2004 accident, the number of claims shows Claimant's familiarity with obtaining palliative treatment by claiming a work accident.

DISCUSSION AND FURTHER FINDINGS OF FACT

16. **Credibility.** Claimant's demeanor did not appear to be outside the usual run of sincere claimants. However, her recollection of frequent, even constant, low back and neck pain between March 2004 and January 2005 is inconsistent with the absence of medical records where her other medical records show she does not hesitate to seek treatment for minor complaints.

17. The testimony of Claimant's husband is similarly inconsistent with the medical records. His current recollection does not trump the records of physicians made contemporaneous to their expert observations of her condition.

18. **Causation.** A claimant must prove she was injured as the result of an accident arising out of and in the course of employment. Seamans v. Maaco Auto Painting, 128 Idaho 747, 918 P.2d 1192 (1996). Proof of a possible causal link is not sufficient to satisfy this burden. Beardsley v. Idaho Forest Industries, 127 Idaho 404, 901 P.2d 511 (1995). A claimant must provide medical testimony that supports a claim for compensation to a

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reasonable degree of medical probability. Langley v. State, Industrial Special Indemnity Fund, 126 Idaho 781, 890 P.2d 732 (1995).

19. As treating physician and the only testifying medical provider who actually observed Claimant's condition immediately after the accident and for a period of time after her medical stability, Dr. Collet's opinions are entitled to great weight. He actually observed Claimant's back and neck conditions and symptoms – or lack thereof – while he treated her for elbow and knee problems in mid-2004.

20. Claimant's history of significant intermittent chiropractic care shows her degenerative condition was symptomatic and preceded the January 8, 2004 accident.

21. Claimant showed she was injured as a result of the January 8, 2004 accident. She suffered minor muscle strains which completely healed by March 5, 2004. Claimant failed to show her subsequent complaints were related to the subject accident.

22. **Medical Care.** Claimant received reasonable medical care for the period of January 8 through March 5, 2004. Surety accepted and paid these bills. Additional medical care received subsequently was unrelated to the subject accident.

23. Because such subsequent medical care was unrelated to the subject accident, Defendants' assertions about the amount of the bills for such care are moot.

24. **TTD.** Claimant returned to work after the accident at modified duty. She lost no unpaid work time through the date of medical stability, March 5, 2004. She failed to show she is entitled to TTD benefits after that date.

25. **PPI/PPD.** "Permanent impairment" is defined by statute. Idaho Code §§ 72-422, -224. When determining impairment, the opinions of physicians are advisory only. The Commission is the ultimate evaluator of impairment. Urry v. Walker & Fox Masonry,

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115 Idaho 750, 769 P.2d 1122 (1989); Thom v. Callahan, 97 Idaho 151, 540 P.2d 1330 (1975).

Here, Claimant failed to show it likely she suffered any compensable permanent impairment as a result of the accident. In the absence of compensable PPI, no permanent disability is awardable.

CONCLUSIONS OF LAW

1. Claimant suffered injury, minor strains, as a result of her January 8, 2004 industrial accident.

2. Claimant received compensable medical care from the date of the accident through March 5, 2004. All medical care received thereafter was unrelated to the accident.

3. Because medical treatment received after March 5, 2004 was unrelated to the accident, the amount of medical bills for such treatment is a moot issue.

4. Claimant lost no unpaid work time from January 8 through March 5, 2004. She failed to show lost work time thereafter related to this accident.

5. Claimant failed to show she suffered permanent impairment or disability as a result of the accident.

RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing Findings of Fact and Conclusions of Law as its own and issue an appropriate final order.

DATED this 30TH day of September, 2008.

INDUSTRIAL COMMISSION

/S/_____
Douglas A. Donohue, Referee

ATTEST:

/S/_____
Assistant Commission Secretary

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SUZANNE L. WEENIG,)	
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Claimant,)	IC 2004-000696
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INTERMOUNTAIN GAS COMPANY,)	ORDER
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Employer,)	
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ADVANTAGE WORKERS)	
COMPENSATION INSURANCE COMPANY,)	
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Defendants.)	
)	

Pursuant to Idaho Code § 72-717, Referee Douglas A. Donohue submitted the record in the above-entitled matter, together with his recommended findings of fact and conclusions of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendations of the Referee. The Commission concurs with these recommendations. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusions of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant suffered injury, minor strains, as a result of her January 8, 2004 industrial accident.
2. Claimant received compensable medical care from the date of the accident through March 5, 2004. All medical care received thereafter was unrelated to the accident.
3. Because medical treatment received after March 5, 2004 was unrelated to the accident, the amount of medical bills for such treatment is a moot issue.

4. Claimant lost no unpaid work time from January 8 through March 5, 2004. She failed to show lost work time thereafter related to this accident.

5. Claimant failed to show she suffered permanent impairment or disability as a result of the accident.

6. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all matters adjudicated.

DATED this 3RD day of OCTOBER, 2008.

INDUSTRIAL COMMISSION

/S/_____
James F. Kile, Chairman

Participated but did not sign

R. D. Maynard, Commissioner

/S/_____
Thomas E. Limbaugh, Commissioner

ATTEST:

/S/_____
Assistant Commission Secretary

CERTIFICATE OF SERVICE

I hereby certify that on the 3RD day of OCTOBER, 2008 a true and correct copy of **FINDINGS, CONCLUSIONS, AND ORDER** were served by regular United States Mail upon each of the following:

Daniel J. Luker
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Boise, ID 83701

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/S/_____